

ORDINANCE NO. 2137

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING CHAPTER 13: ZONING, SECTION 16-100: BOARD OF ADJUSTMENT, SUBSECTION 16-110: ORGANIZATION AND BY ADDING SUBSECTIONS 16-111 THROUGH 16-113 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF TERRELL; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

SECTION I.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS THAT THE REVISED CODE OF ORDINANCES OF THE CITY OF TERRELL, CHAPTER 13: ZONING, SECTION 16-100: BOARD OF ADJUSTMENT SUBSECTION 16-110: ORGANIZATION AND BY ADDING SUBSECTIONS 16-111 THROUGH 16-113 BE AMENDED TO READ AS FOLLOWS:

Section 16-100: Board of Adjustment
16-110 Organization

The board of adjustment will consist of at least five (5) members, each to be appointed by the city council for a term of two (2) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any members, whose place becomes vacant for any cause, in the manner as the original appointment was made. The city council may appoint two (2) alternate members of the board of adjustment who shall serve in the absence of one (1) or more of the regular members when requested to do so by the mayor or city manager. These alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two (2) years and is subject to removal in the same manner as a regular member. Each case before the board of adjustment must be heard by at least 75 percent of the members.

16-111: Authority of Board

(a.) The Board of Adjustments may:

- (1.) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;
- (2.) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;
- (3.) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in

unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

- (4.) hear and decide other matters authorized by an ordinance adopted under this subchapter.
- (b.) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.
 - (c.) The concurring vote of 75 percent of the members of the board is necessary to:
 - (1.) reverse an order, requirement, decision, or determination of an administrative official;
 - (2.) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or
 - (3.) authorize a variation from the terms of a zoning ordinance.

16-112 Appeal to Board

- (a.) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official:
 - (1.) a person aggrieved by the decision; or
 - (2.) any officer, department, board, or bureau of the municipality affected by the decision.
- (b.) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.
- (c.) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due case is shown.

- (d.) The board shall set a reasonable time for the appeal hearing and shall give public notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.

16-113 Judicial Review of Board Decisions

- (a.) Any of the following persons may present to a district court, county court, or county court of law verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:
 - (1.) a person aggrieved by a decision of the board;
 - (2.) a taxpayer; or
 - (3.) an officer, department, board, or bureau of the municipality.
- (b.) The petition must be presented within 10 days after the date the decision is filed in the board's office.
- (c.) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.
- (d.) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.
- (e.) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.
- (f.) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

SECTION II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section III.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and section to this Ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

Section IV.

This Ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED on first reading this the 15th day of October, 2002.

PASSED AND ADOPTED on second reading this the 5th day of November, 2002.

Frances Anderson, Mayor

Attest:

John Rounsavall, City Secretary

Approved as to Form:

Mary Gayle Ramsey, City Attorney